

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KD GRAPHICS, INC. and
JEFFREY KWAIT,

Plaintiffs,

VS.

Civil Action No. 02-CV-4041

TROPICAL GRAPHICS, INC. and
PAUL HIRST,

JURY TRIAL DEMANDED

Defendants.

APPLICATION FOR ENTRY OF DEFAULT

TO: CLERK OF THE COURT

Pursuant to Fed.R.Civ.P. 55(a), Defendants Tropical Graphics, Inc. and Paul Hirst request that a default be entered against Plaintiffs KD Graphics, Inc. and Jeffrey Kwait for failing to answer, plead or otherwise defend against Defendants' Counterclaim, as stated in the Affidavit attached hereto as Exhibit "A", which Defendants incorporate by reference as if set forth in full herein.

Respectfully submitted,

Tracy Zurzolo Frisch, Esquire ID #71072
Steven T. Voigt, Esquire ID #85091
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(215)851-8100

Counsel for Defendants

Date: October ____, 2002

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KD GRAPHICS, INC. and	:	
JEFFREY KWAIT,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Civil Action No. 02-CV-4041
	:	
TROPICAL GRAPHICS, INC. and	:	JURY TRIAL DEMANDED
PAUL HIRST,	:	
	:	
Defendants.	:	
	:	

ENTRY OF DEFAULT

Defendants Tropical Graphics, Inc. and Paul Hirst have requested that default be entered against Plaintiffs KD Graphics, Inc. and Jeffrey Kwait for failing to answer, plead in or otherwise defend this action against Defendants' Counterclaim,

IT IS **ORDERED** that default is entered against Plaintiffs KD Graphics, Inc. and Jeffrey Kwait.

DATED this ____ day of October, 2002.

CLERK OF COURT

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**KD GRAPHICS, INC. and
JEFFREY KWAIT,**

Plaintiffs,

vs.

**TROPICAL GRAPHICS, INC. and
PAUL HIRST,**

Defendants.

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Civil Action No. 02-CV-4041

JURY TRIAL DEMANDED

AFFIDAVIT OF STEVEN T. VOIGT

I, Steven T. Voigt, being duly sworn according to law, depose and say:

1. I am an attorney at the law firm of Reed Smith LLP, and I represent Defendants in this action.
2. Pursuant to Fed.R.Civ.P. 5(b)(1), a copy of the Amended Counterclaim was served on Plaintiffs on September 19, 2002.
3. Plaintiffs did not file an Answer or otherwise respond to the Amended Counterclaim on or before October 7, 2002.
4. As of the date of this affidavit, Plaintiffs have not filed an Answer or otherwise responded to the Amended Counterclaim.
5. Plaintiffs did file a motion to dismiss Counts IV and V of Defendants' initial Counterclaim. The Court denied this motion and ruled that Plaintiffs could raise the contentions in the motion to dismiss at the arbitration. Plaintiffs never responded to Counts I, II, and III of

the initial Counterclaim¹ and all of the Counts - Counts I through V - of the Amended Counterclaim.

6. The time within which Plaintiffs could plead or otherwise defend against the Amended Counterclaim has expired.

7. To the best of Defendants' knowledge, Plaintiff Jeffrey Kwait is not an infant, not incompetent, and not in the military.

8. Plaintiffs Jeffrey Kwait and KD Graphics owe Defendant Tropical Graphics \$1933.17 plus additional damages as may be awarded at the hearing.

9. Default should be entered against Plaintiffs.

Steven T. Voigt

SWORN TO AND SUBSCRIBED before me this ____ DAY OF October, 2002, by Steven T. Voigt who is personally known to me or who has produced _____ as identification and who did take an oath. If no type of identification is indicated, the above-named person is personally known to me.

Signature of Notary Public

Print Name of Notary Public

I am a Notary Public of the State of Pennsylvania, and my commission expires on _____.

¹ Plaintiffs were obligated to respond to the initial Counterclaim, despite filing a motion to dismiss, which the Court denied with permission to raise the contentions at the arbitration. See Fed R. Civ.P. 12(a)(4)(A); McNeil v United States, 12 Fed. Appx. 805, 807 n.1, 2001 WL 459925 (10th Cir. 2001) (the federal rules require an answer when the Court postpones disposition of a motion to dismiss until trial).

CERTIFICATE OF SERVICE

I, Steven T. Voigt, hereby certify that a true and correct copy of the foregoing Defendants' Request for Entry of Default Against Plaintiffs was served this 16th day of October, 2002, by first class U.S. mail, postage prepaid, upon the following:

Leon W. Silverman, Esquire
Andrew Lapat, Esquire
Stein and Silverman, P.C.
230 S. Broad Street, 18th Floor
Philadelphia, PA 19102

Steven T. Voigt